

## **Complaint**

Mr K complains that Moneybarn No.1 Limited (trading as “Moneybarn”) unfairly entered into a conditional sale agreement with him. He’s said proportionate checks weren’t carried out and he was provided with unaffordable finance. He’s said that Moneybarn failed to disclose the commission that it paid to the credit broker that introduced his business and that this created an unfair relationship because of the impact this had on the interest he had to pay.

## **Background**

In October 2019, Moneybarn provided Mr K with finance for a used car. The purchase price of the car was £9,725.00. Mr K paid a deposit of £1,000.00 and entered into a 60-month conditional sale agreement with Moneybarn for the remaining £8,725.00 he required to complete his purchase. The loan had interest, fees and total charges of £8,151.36 and the balance to be repaid of £16,876.36 (which doesn’t include Mr K’s deposit) was due to be repaid in 59 monthly instalments of £286.04.

Our investigators concluded that Moneybarn hadn’t done anything wrong or treated Mr K unfairly both in relation in deciding to lend to him, or paying commission to the credit broker. So the investigators didn’t recommend that Mr K’s complaint should be upheld. Mr K disagreed and asked for a final decision from an ombudsman.

## **My findings**

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Having carefully thought about everything I’ve been provided with, I’m not upholding Mr K’s complaint. I’ll now explain why in a little more detail and start by setting out my thoughts on Mr K’s affordability complaint.

### *Did Moneybarn irresponsibly lend to Mr K?*

We’ve explained how we handle complaints about irresponsible and unaffordable lending on our website. And I’ve used this approach to help me decide Mr K’s complaint.

Moneybarn needed to make sure that it didn’t lend irresponsibly. In practice, what this means is that Moneybarn needed to carry out proportionate checks to be able to understand whether any lending was sustainable for Mr K before providing it.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low, the amount lent was high, or the information the lender had – such as a significantly impaired

credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

Moneybarn says it agreed to this application after Mr K provided details of his monthly income, which it cross checked against information from credit reference agencies on the amount of funds going into Mr K's main bank account each month. It says it also carried out credit searches on Mr K which showed that had had a county court judgment ("CCJ") taken out against him and at least one defaulted account recorded against him.

In Moneybarn's view, when reasonable repayments to the credit commitments Mr K already had were combined with estimates of his living costs and then deducted from his income, he had enough left over to be able to make the monthly repayments to this agreement. On the other hand, Mr K says his existing commitments meant that these payments were unaffordable and there was no way he was going to be able to maintain them.

I've thought about what Mr K and Moneybarn have said.

The first thing for me to say is that while Moneybarn did use estimates of Mr K's living costs, the basis of these estimates were set out on the explanation document that Mr K electronically signed. Indeed, I can see that the explanation document set out that the income and expenditure assessment was being conducted on the basis of having a monthly income of £1,800.00 and a total non-discretionary monthly expenditure of around £1,050.00.

Although I do accept that while Mr K was told that the estimate of his non-discretionary expenditure was made up of estimates of his housing, utility, council tax, other living and monthly vehicle costs there weren't breakdowns for these individual components. In my view, given Mr K's previous difficulty repaying credit, for Moneybarn's checks to have been proportionate it probably should have broken down the estimates in this way.

Mr K says that his expenditure exceeded his income. However, this is an argument made without supporting evidence, as Mr K says the statements for the account he was making the bulk of his committed payments from are no longer available. I also need to keep in mind that it was Mr K that chose to purchase a car at the time that he did. Mr K also electronically signed documentation confirming that he had monthly expenditure of around £1,050.00.

In these circumstances, it's difficult for me to agree that Moneybarn asking Mr K to confirm what he spent on housing, utility, council tax, other living and monthly vehicle costs, as I think it should have done, would have led to Mr K saying that he spent in excess of his income on this in the way he now says. This is especially as he hasn't proved able to provide the corroborating evidence to support what he's now saying.

So, I'm not persuaded that Moneybarn doing more in this instance is likely to have resulted in taking a different decision on lending to Mr K. I appreciate that Mr K may now regret entering into this conditional sale agreement. However, I'm afraid that I can't hold Moneybarn responsible for the fact that it reasonably relied on Mr K suggesting that he was in a better financial position than he may have been in.

As this is the case and while I appreciate that Mr K may disagree, I don't think that the fact that Mr K may have found it more difficult that he expected to make his payments in itself means that Moneybarn shouldn't have lent to him.

In reaching my conclusions, I've also considered whether the lending relationship between Moneybarn and Mr K might have been unfair to Mr K under section 140A of the Consumer Credit Act 1974 ("CCA").

However, for the reasons I've explained, I don't think Moneybarn irresponsibly lent to Mr K or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that section 140A CCA or anything else would, given the facts of this complaint, lead to a different outcome here.

Overall and having carefully considered everything, while I think that there is an argument for saying that Moneybarn's checks before entering into this conditional sale agreement with Mr K didn't go far enough, I'm satisfied that it doing more won't have stopped it from providing these funds, or entering into this agreement with Mr K.

I'll now turn to Mr K's complaint regarding the commission Moneybarn paid to the credit broker that introduced him.

#### *Mr K's concerns regarding commission*

In the joined cases of *Hopcraft, Johnson & Wrench*<sup>1</sup>, the Supreme Court considered how the law applies to motor finance commission related claims.

Broadly speaking, the Supreme Court concluded that the relationship between a motor finance lender and a consumer could sometimes be unfair to the consumer (under S140 CCA) in circumstances where neither the credit broker nor the lender disclosed that:

- there was a discretionary commission arrangement ("DCA") – an arrangement where the commission paid was linked to the loan interest rate and the broker had the discretion to set a higher interest rate to receive more commission.
- the credit broker would receive a high commission relative to the cost of credit or amount borrowed.
- the credit broker was required to select the lender in preference to other lenders the broker could offer. This is sometimes referred to as a commercial tie or a right of first refusal.

In this case, Moneybarn has provided evidence to show that it paid Mr K's credit broker a fixed commission payment of £550 for introducing his business. The agreement was that Moneybarn would pay Mr K's credit broker £550 for each customer it introduced that went on to take out a conditional sale agreement.

I know that Mr K has said that he wasn't told about this commission and that he referred to a number of instances of Moneybarn breaching its obligations. In effect, Mr K's complaint is essentially that the undisclosed commission payment of £550 that Moneybarn paid to his credit broker, resulted in the lending relationship between Moneybarn and him being unfair to him under Section 140 of The Consumer Credit Act 1974 ("S140 CCA").

While I've not been provided with sufficient evidence to be persuaded that the existence of commission, which in this case was £550, was disclosed to Mr K, I nonetheless consider that it is unlikely – and certainly less likely than not – that a court would find that this commission payment rendered the lending relationship between Moneybarn and Mr K unfair to Mr K under S140 CCA. And I am not persuaded that Moneybarn failed to act fairly and reasonably in all the circumstances of this matter.

I consider this to be the case because:

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<sup>1</sup> *Hopcraft and another (Respondents) v Close Brothers Limited (Appellant); Johnson (Respondent) v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant); Wrench (Respondent) v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance (Appellant)* [2025] UKSC 33

- the commission of £550 did not involve a DCA. So the credit broker did not have discretion to set Mr K's interest rate.
- I think it less likely than not that a court would consider the £550 commission payment to be high when compared to the amount Mr K borrowed, or the cost of the agreement Mr K entered into. I think it unlikely that this commission of £550 would have been a major consideration in Mr K's mind, had it been disclosed to him at the time of entering into the conditional sale agreement, when the commission payment represented less than 6.5% of the amount he borrowed and less than 7% of the total cost of the credit.
- I think it less likely than not that a court would consider that a commercial tie existed between Mr K's credit broker and Moneybarn. In reaching this view, I have reviewed a range of contracts and agreements that Moneybarn had with various brokers over several years. I have seen nothing in any of these agreements indicating that Moneybarn had contractual ties with any of the credit brokers that it worked with. I consider this to be consistent with Moneybarn's position within the market as a lender serving customers that typically find it difficult to obtain credit from more mainstream lenders and have less choice as a result and the public explanation its Chief Executive Officer made to the stock market about it not operating commercial ties. In this context, I've not seen anything to support an argument that a commercial tie existed between Moneybarn and the credit broker.

Overall, I've not been persuaded that the commission Moneybarn paid to the credit broker that introduced Mr K's business means that it failed to act fairly and reasonably towards him. So I've not been persuaded to uphold Mr K's commission complaint either.

Having carefully considered everything, I'm satisfied that Moneybarn didn't act unfairly towards Mr K when it entered into this conditional sale agreement with him. And I'm not upholding this complaint. I appreciate that this will be very disappointing for Mr K. But I hope he'll understand the reasons for my decision and that he'll at least feel his concerns have been listened to.

### **My final decision**

My final decision is that I'm not upholding Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 23 March 2026.

Jeshen Narayanan  
**Ombudsman**